

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

U.S. BANK, N.A.,

Plaintiff,

v.

ENTERTAINER, Official No. 627953, their
Engines, Machinery, Appurtenances, etc.,
In Rem;

and

FIRST CAPITAL PARTNERS, LTD., and
S. HILTON SMITH,
In Personam,

Defendants.

IN ADMIRALTY

Case No. CV05-1534JCC

STIPULATED ORDER FOR SALE
WITH CREDIT BID AUTHORITY

STIPULATION

IT IS HEREBY stipulated by and among plaintiff U.S. Bank, N.A., and plaintiff-in-intervention City Investors XIII, LLC, and defendants ENTERTAINER, *in rem*, and First Capital Partners, Ltd. and S. Hilton Smith, *in personam*, and their respective attorneys of record that:

1. The vessel ENTERTAINER, Official Number 627953, her engines, machinery, and appurtenances, etc., is now in the custody of Bill Orr, substitute custodian, of Felix Marine Industries, Seattle, Washington, and subject to expenses for supervising its condition, premium for port risk insurance, and other expenses. Said vessel is likely to deteriorate in value by reason of being detained in custody and is subject to vandalism as there is not a permanent keeper stationed aboard the vessel. There is a demand for vessels such as ENTERTAINER and, if the sale of said vessel is delayed and it is further detained in custody pending the outcome of this suit, all parties concerned will be injured and damaged by additional expenses for the care and protection of said vessel and the likely deterioration of said vessel.

2. On November 21, 2005, this Court entered an Order for Default against defendants who had not appeared or answered the Complaint. On September 30, 2005, the U.S. Marshal published notice in the *Seattle Daily Journal of Commerce* that ENTERTAINER had been arrested and that any person having or claiming an interest in or to said vessel must file a claim within ten (10) days after the publication of said notice and file an answer to plaintiff's Complaint within twenty (20) days after filing the claim. Other than plaintiff-in-intervention, no other party has filed a claim, answered or appeared to express any interest in or claim to or against the defendant vessel ENTERTAINER, Official Number 627953, her engines, tackle, apparel, furniture and equipment.

3. The interest of all parties concerned will be promoted by a speedy judicial sale of said vessel, her engines, tackle, apparel, furniture, equipment, and all appurtenances thereunto appertaining and belonging and all additions, improvements and replacements, the proceeds of said sale to be brought into Court for the benefit of whom it may concern, subject to the further order of the Court.

4. The terms and conditions of the sale of ENTERTAINER shall be in accordance with the Local Admiralty Rules, including Rule 145; provided, however, that

(a) Plaintiff U.S. Bank, N.A. shall have *in rem* judgment against the ENTERTAINER, O.N. 627953, her engines, machinery, and appurtenances, etc., including, without limitation, all personal property now aboard the vessel, and judgment *in personam* against First Capital Partners, Ltd. and S. Hilton Smith, in the amount of \$296,562.90, together with per diem interest at \$97.04 from June 10, 2005, until the date of this order, and interest thereafter as prescribed by 28 U.S.C. § 1961, along with reasonable attorneys fees and costs and *in custodia legis* expenses to date;

(b) The parties stipulate that Plaintiff U.S. Bank, N.A. has a first preferred marine mortgage on the ENTERTAINER, O.N. 627953, and no other lien has priority over the *in rem* judgment of U.S. Bank, N.A.;

(c) Plaintiff U.S. Bank, N.A. shall be entitled to bid in lieu of cash the amount of its judgment against the ENTERTAINER, O.N. 627953, her engines, machinery, and appurtenances, etc., including, without limitation, all personal property now aboard the vessel.

(d) The parties further stipulate that City Investors XIII, LLC, shall have *in rem* judgment against the ENTERTAINER, O.N. 627953, her engines, machinery, and appurtenances, etc., including, without limitation, all personal property now aboard the vessel, in the amount of \$5,827.90 and that City Investors XIII, LLC has a second priority lien on the ENTERTAINER, O.N. 627953 in said amount behind U.S. Bank, N.A. for moorage;

(e) The parties further stipulate that if the sale proceeds of the ENTERTAINER exceed that which is necessary to pay and satisfy U.S. Bank, N.A.'s *in*

rem judgment and the stipulated amount of the judgment of City Investors XIII, LLC, the remaining proceeds shall remain in the registry of the court pending further order of the court; and

(f) The parties stipulate that said sale of the ENTERTAINER shall occur where the vessel now lies at Lake Union Dry Dock, 1515 Fairview Avenue East, Seattle, Washington on a date agreeable to U.S. Bank, N.A. and the U.S. Marshal.

DATED this 21 day of April, 2006.

HOLMES WEDDLE & BARCOTT

/s/

John E. Casperson, WSBA#: 14292
Attorneys for U.S. BANK, N.A.

AIKEN, ST LOUIS & SILJEG

/s/

James Richard Woepfel, WSBA#: 13225
Attorneys for Entertainer, O. N. 62795, First
Capital Partners, Ltd., S. Hilton Smith

FOSTER PEPPER LLC

/s/

Rodrick J Dembowski, WSBA#: 31479
Courtney M. Anderson, WSBA# 34376
Attorneys for City Investors XIII, LLC

ORDER

Based on the foregoing stipulation in writing,

IT IS HEREBY ORDERED:

1. Proper notice of the arrest of the defendant vessel ENTERTAINER was given and defendants and all others not named herein have failed to file any claim, appear or answer either plaintiff's Complaint or each plaintiff-in-intervention's Complaint, Defendants and all such other persons who have failed to file any claim, appear or answer either plaintiff's complaint or intervenor plaintiff's Complaint are in default and are barred from any interest in or claim to said vessel.

2. The defendant vessel ENTERTAINER shall be sold by the United States Marshal where the vessel now lies at Lake Union Dry Dock, 1515 Fairview Avenue East, Seattle, Washington, on a date to be set by plaintiff and the U.S. Marshal, after six (6) days public notice given in a manner and form prescribed by law and under the terms and conditions of the attached Stipulation of the parties to this suit. Plaintiff U.S. Bank, N.A. shall be entitled to bid in lieu of cash the amount of its judgment against the ENTERTAINER, O.N. 627953, her engines, machinery, and appurtenances, etc., including, without limitation, all personal property now aboard the vessel.

3. The U.S. Marshal shall pay directly to the U.S. Bank, N.A. the amount necessary to pay the existing preferred marine mortgage of \$296,562.90, together with per diem interest at \$97.04 from June 10, 2005, until the date of this order, and interest thereafter as prescribed by 28 U.S.C. § 1961, along with reasonable attorneys fees and costs and *in custodia legis* expenses, and, if any funds remain thereafter, shall pay directly to City Investors XIII, LLC the sum of \$5,827.90, or any portion thereof, and bring the

remaining proceeds of said sale into Court and deposit same with the Clerk thereof, pending the further hearing of this action and pending the final judgment herein.

4. The terms and conditions of the sale of defendant vessel shall be in accordance with the Local Admiralty Rules, including Rule 145.

DATED this 26th day of April, 2006.


UNITED STATES DISTRICT JUDGE

Presented by:

HOLMES WEDDLE & BARCOTT

/s/
John E. Casperson, WSBA#: 14292
Attorneys for Plaintiff

Copy Received; Approved as to
Form; Notice of Presentation Waived:

AIKEN, ST LOUIS & SILJEG

/s/

James Richard Woeppel, WSBA#: 13225
Attorneys for Entertainer, O.N. 62795, First
Capital Partners, Ltd., S. Hilton Smith

FOSTER PEPPER LLC

/s/

Rodrick J Dembowski, WSBA#: 31479
Courtney M. Anderson, WSBA# 34376
Attorneys for City Investors XIII, LLC